

words. No new matter is added. (Ordinarily, 37 C.F.R. § 1.125 requires that a substitute specification be accompanied by a marked-up copy indicating added and deleted text. However, in the present case, the submitted substitute specification has no added or deleted text, so the marked-up copy would be identical to the “clean” copy.)

Accordingly, if the Examiner prefers, he may accept the substitute specification as justification to withdraw the objection.

Claims 1-11 stand rejected under 35 U.S.C. § 102(e) as anticipated by Bearden et al., U.S. Patent No. 6,871,233. Applicants respectfully traverse this rejection.

Applicants’ argument can be summarized concisely as follows: the claims recite both a “management device” and “managed device,” and the claims further detail specific features associated with each device. The Office Action indicates which element of Bearden et al. supposedly anticipates the management device and which element of Bearden et al. supposedly anticipates the managed device. However, regarding specific features that the claims associate with the managed device, the Office Action cites disclosures of subject matter describing the management device instead. The Office Action also addresses the management device inconsistently. In view of the inconsistent reliance on the prior art to teach features associated with each element as recited in the claims, the rejection has not been properly justified.

Applicants provide elaboration of their argument as follows:

The rejection relies on management server 301 of Bearden et al. to teach the “management device” and on all of QoS-enabled network elements 307-1 through 307-N to teach the “managed device.” (See Office Action, page 7 bottom.) Fig. 3 of Bearden et al. shows those elements as part of network 300.

Fig. 4 provides a flow chart describing a process associated with the system of Fig. 3. Note that, in step 417, network resources are reduced if a delivered QoS exceeds the desired QoS (column 6, lines 3-4), and, in step 418, network resources are increased if the delivered QoS does not exceed the desired QoS (column 6, lines 11-13). The text corresponding to Fig. 4 discusses an example of three processes running concurrently *in management server 301* (column 5, lines 2-3.).

Note that this text does *not* teach that the processes run in any of QoS-enabled network elements 307-1 through 307-N. Applicants explained the following in their submission of June 29, 2005 on page 8:

In contrast to the *Bearden et al.* system, applicant claims elements of a system in which the processing to change network resources occurs *in the managed device*. Regarding claims 1-4, base claim 1 specifies that the management device has (1) means for inputting evaluation information for evaluating an enforcement effect *of a policy in the managed device*; (2) means for inputting adjustment information for dynamically adjusting *a policy operated by the managed device*; and (3) means for distributing the input policy information, policy evaluation information, and policy adjustment information *to the managed device*. Regarding claims 5-11, base claim 5 specifies that *the managed device* has (1) means for *enforcing a policy information*; (2) means for *evaluating a policy under operation ...*; and (3) means for *dynamically adjusting a policy under operation* based on ...

However, the recent Office Action does not cite in response any disclosure in *Bearden et al.* explaining that any one of QoS-enabled network elements 307-1 through 307-N (relied upon to teach the managed device) has the features quoted above from the claims.

Because neither the first nor second Office Action indicates properly how the prior art teaches the quoted claim features, applicants have requested a telephone interview to obtain this

information. Applicants appreciate that the Examiner granted their request, tentatively scheduling the interview for January 5, 2006. On December 21, 2005, applicants' representative sent to the Examiner via facsimile the interview agenda, which contains the request (if the Examiner still considers maintaining the rejection) that he will indicate to applicants' representative during the interview the following:

- (A) (regarding claims 1-4) how management server 301 has:
 - (1) means for inputting evaluation information for evaluating an enforcement effect of a policy *in any one of QoS-enabled network elements 307-1 through 307-N*;
 - (2) means for inputting adjustment information for dynamically adjusting a policy operated *by any one of QoS-enabled network elements 307-1 through 307-N*; and
 - (3) means for distributing the input policy information, policy evaluation information, and policy adjustment information *to any one of QoS-enabled network elements 307-1 through 307-N*; and
- (B) (regarding claims 5-11) how *any one of QoS-enabled network elements 307-1 through 307-N* (as opposed to management server 301) has:
 - (1) means for enforcing a policy information;
 - (2) means for evaluating a policy under operation ...; and
 - (3) means for dynamically adjusting a policy under operation based on ...

With this straightforward exercise, applicants respectfully submit that the Examiner will realize that the rejection does not rely *consistently* on individual elements of the prior art to justify the holding of anticipation. Accordingly, the anticipation rejection should be withdrawn.

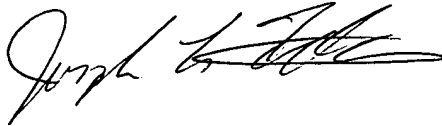
In view of the remarks above, applicants submit that the application is in condition for allowance. Accordingly, a Notice of Allowability is hereby requested. If for any reason it is believed that this application is not now in condition for allowance, the Examiner is welcome to

contact applicants' undersigned attorney at the telephone number indicated below to discuss resolution of the remaining issues.

If this paper is not timely filed, applicants petition for an extension of time. The fee for the extension, and any other fees that may be due, may be debited from Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'Joseph L. Felber', with a stylized flourish at the end.

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Enclosure: Substitute Specification

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